

FROM

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JUL 08 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Dias et al.

Serial No.: 09/551,745

Filed: April 18, 2000

For: REAL-TIME SHARED DISK SYSTEM FOR
COMPUTER CLUSTERS

) Art Unit: 2188

) Examiner: Namazi

) AM9-98-080C

) July 8, 2004

) 750 B STREET, Suite 3120

) San Diego, CA 92101

OFFICIAL

RESPONSE TO OFFICE ACTION

Commissioner of Patents and Trademarks
Washington, DC 20231

Dear Sir:

This responds to the Office Action dated June 30, 2004, allowing all claims except Claim 22, rejecting Claim 22 as being anticipated by Yamato, and objecting to the declaration based on the allegation that page 5, lines 9-11 and page 10, lines 9-15 (and, hence, the basis for the amendment of Claim 22) were not in the parent application, potentially making this application a CIP, not a continuation, of the parent application.

Addressing the objection to the declaration first, it appears from Applicant's files that the above specification portions were indeed present in the parent application filed July 10, 1998 (now USPN 6,182,197). The undersigned no longer has access to his hard copy of the file history of the parent application, but he hereby declares under penalty of perjury that the undersigned's electronic version of the original application indeed contains the allegedly missing portions of the specification and bears a "last

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modified" date in his computer file system of July 6, 1998, i.e., four days before the parent application was filed, indicating that the allegedly missing portions indeed were present in the parent application as filed.

The undersigned has reviewed the issued patent that sprung from the parent application and notes that the allegedly missing portions for some reason do not appear in the issued patent, but that is not a dispositive showing that the allegedly missing portions were not in the parent application as filed. They might have been, but later deleted, potentially by a mistake during patent printing. In any case, it is respectfully suggested that to establish the basis for the objection, the parent application file history must be consulted to examine the contents of the parent application *as filed*, not as issued.

With respect to the allegation that Yamato, col. 12, lines 62-67 (discussing the buffer 53) teaches a controller that combines at least one priority with ordering based on an internal state of the associated disk, the buffer 53 has been "considered" by the examiner to be part of the controller, but it is not. In Yamato, the disk is the element 10, the disk controller evidently is the element 20, and neither incorporates the relied-upon buffer 53, which is not even present in the first embodiment shown in Figure 1 (which nevertheless shows the disk 10 and controller 20). The buffer 53 is part of a transfer control device 50 that is nowhere mentioned as being part of the controller 20 or disk 10. Indeed, the opposite - it is shown as an element that is altogether separate from the disk drive. The buffer 53 buffers video packets *from* the disk 10, col. 10, lines 35-38, with the capacity of the buffer 53 being used in determining the issuance of read requests *to* the disk drive, col. 10, line 66 continuing to col. 11, line 2. Thus, regardless of how it is used in Yamato, the capacity of the buffer 53 has nothing to do with the internal state of the disk 10, but rather only its own state, which is independent of the internal state of the disk.

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The examiner is cordially invited to telephone the undersigned at 619.338.8075 for any reason that would advance the instant application to allowance.

Respectfully submitted,



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